

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

<hr style="border: 0.5px solid black;"/> In re:	)	Chapter 11
	)	
THE IT GROUP, INC., et at,	)	Case No. 02-10118 (MFW)
	)	
Debtors.	)	Jointly Administered
	)	
<hr style="border: 0.5px solid black;"/> IT LITIGATION TRUST,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. A. No. 04-CV-1268 (KAJ)
	)	
DANIEL A. D'ANIELLO, FRANCIS J. HARVEY,	)	
JAMES C. MCGILL, RICHARD W. POGUE,	)	
PHILLIP B. DOLAN, E. MARTIN GIBSON,	)	
ROBERT F. PUGLIESE, CHARLES W.	)	
SCHMIDT, JAMES DAVID WATKINS,	)	
ANTHONY J. DeLUCA, HARRY J. SOOSE,	)	
THE CARLYLE GROUP, THE CARLYLE	)	
GROUP L.L.C., CARLYLE PARTNERS II, L.P.,	)	
CARLYLE SBC PARTNERS II, L.P., CARLYLE	)	
INTERNATIONAL PARTNERS II L.P.,	)	
CARLYLE INTERNATIONAL PARTNERS III,	)	
C/S INTERNATIONAL PARTNERS, CARLYLE	)	
INVESTMENT GROUP, L.P., CARLYLE-IT	)	
INTERNATIONAL PARTNERS, LP,	)	
CARLYLE-IT INTERNATIONAL PARTNERS II,	)	
L.P., CARLYLE-IT PARTNERS L.P.,	)	
and T.C. GROUP, L.L.C.,	)	
	)	
Defendants.	)	
	)	

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION  
FOR LEAVE TO FILE A SECOND AMENDED COMPLAINT**

Plaintiff, The IT Litigation Trust ("the Trust"), through counsel, respectfully requests that the Court grant it leave to file a Second Amended Complaint. Federal Civil Rule 15(a) provides

that “leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). Additionally, if “a complaint is subject to a Rule 12(b)(6) dismissal, a district court must permit a curative amendment unless such an amendment would be inequitable or futile.” *Alston v. Parker*, 363 F.3d 229, 235 (3d Cir. 2004). Moreover, the district court must provide the plaintiff with this opportunity even if the plaintiff does not seek leave to amend. *Id.* As a result, even when a plaintiff does not seek leave to amend his complaint after a defendant moves to dismiss it, unless the district court finds that amendment would be inequitable or futile, the court must inform the plaintiff that he has leave to amend the complaint within a set period of time.

In the present case, the requested amendments are not inequitable or futile. First, Defendants have not filed answers to the Amended Complaint, and have asked the Court to certify a question of law to the Delaware Supreme Court. Allowing the amendment will make the certification issue moot. Further, any additional briefing that results from the filing of an amended pleading would not cause any more time delays than that which would be caused by having to brief the issue before the Delaware Supreme Court. Second, the request to amend is not futile. The deposition of Defendant Harvey provides particularized facts that establish the board was dominated and controlled by the Carlyle Defendants. This admission, when incorporated into the pleadings, satisfies not only the pleading requirements of *Tower Air*, but also Delaware state law, which renders the Defendants’ request for certification moot.

**CONCLUSION**

For the foregoing reasons, Plaintiff respectfully requests that the Court grant its Motion for Leave to Amend.

Dated: January 10, 2006

THE BAYARD FIRM

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IT LITIGATION TRUST